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10 Attorneys for Plaintiff  
11 Purple Wine Production Company

12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 PURPLE WINE PRODUCTION  
15 COMPANY, a California corporation,

16 Plaintiff,

17 v.

18 RYAN PATRICK VINEYARDS, LLC  
19 a Washington limited liability company,

20 Defendant.  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**

NOV 18 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**E-filing**

**JL**

Case No. **CV 10 5249**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES**

**1. FEDERAL TRADEMARK  
INFRINGEMENT**

**2. FALSE DESIGNATION OF  
ORIGIN**

**3. COMMON LAW TRADEMARK  
INFRINGEMENT**

**4. CALIFORNIA STATUTORY  
UNFAIR COMPETITION**

**5. COMMON LAW UNFAIR  
COMPETITION**

**[Jury Trial Demanded]**

COMMINS & KNUDSEN  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

1 Plaintiff Purple Wine Production Company, successor in interest to Q4X and Four  
2 Vines (collectively, Plaintiff) alleges as follows:

3  
4 **JURISDICTION**

5  
6 1. This Court has original jurisdiction of the subject matter of each of the  
7 claims herein as follows:

8  
9 2. Trademark and false designation of origin and false description or  
10 representation in violation of 15 U.S.C. Sections 1114 and 1125(a), with original jurisdiction  
11 vested in this Court by virtue of 28 U.S.C. Sections 1331 and 1338.

12  
13 3. Statutory unfair competition arising under California Business and  
14 Professions Code Section 17200, *et seq.*, with supplemental jurisdiction vested in this  
15 Court by virtue of 28 U.S.C. Sections 1338(b) and 1367.

16  
17 **VENUE**

18  
19 4. Venue is proper in this district pursuant to 28 U.S.C. Section 1391  
20 (b) and (c) because, upon information and belief, Defendant does business in and has  
21 substantial contacts with the Northern District of California, expected or should  
22 reasonably have expected its acts to have consequences in the State of California and  
23 within this judicial district, and a substantial portion of the events at issue have arisen and  
24 will arise in this judicial district.

**PRELIMINARY ALLEGATIONS**

5. Plaintiff is a California corporation with its principal place of business in Graton, California, and has been in the business of producing and selling wines since 2003.

6. Plaintiff is informed and believes and thereon alleges that Defendant Ryan Patrick Vineyards, LLC (Defendant) is a Washington limited liability company with its principal place of business in Leavenworth, Washington. Defendant is in the business of producing and selling wines in interstate commerce.

**PLAINTIFF'S ACQUISITION OF FOUR VINES AND THE MARKS**

7. Plaintiff has acquired from Q4X, LLC, doing business as Four Vines (Four Vines), all right, title, and interest in and to the trademarks NAKED and NAKED CHARDONNAY (the Marks) used and owned by Four Vines.

8. Since as early as 2001 Four Vines has used the trademarks NAKED and NAKED CHARDONNAY in connection with the advertisement, promotion, distribution, offering for sale, and sale of wines in interstate commerce.

9. Four Vines obtained U.S. Trademark Reg. No. 3,343,976, with a filing date of March 31, 2006 and issued on November 27, 2007, for NAKED in International Class 33 for wines. The registration is now in the name of and owned by Plaintiff.

10. In addition, since at least as early as September 15, 2001, Four Vines has used, and Four Vines thereby established common law trademark rights in and to, the

1 NAKED CHARDONNAY mark in the U.S. in connection with wine. Four Vines'  
2 common law rights have been assigned to and are now owned by Plaintiff.

3  
4 11. Four Vines chose the NAKED and NAKED CHARDONNAY  
5 trademarks as an arbitrary and memorable means to identify its product, Chardonnay  
6 fermented in 100% stainless steel tanks rather than oak barrels.

7  
8 12. Four Vines established nationwide recognition and significant  
9 goodwill in the Marks through continuous and widespread use in the U.S. since at least as  
10 early as 2001. Attached hereto as Exhibit A is Plaintiff's current label displaying the  
11 Marks.

12  
13 13. Four Vines invested significant time, energy and financial resources  
14 in promoting and establishing the Marks and the goods offered thereunder. As a result,  
15 Plaintiff's NAKED and NAKED CHARDONNAY wines have gained significant  
16 recognition in the marketplace, consistently receiving unsolicited media coverage and  
17 positive reviews and accolades from well-recognized industry publications, newspapers,  
18 and other media with national distribution.

19  
20 14. Four Vines has continuously displayed and offered its wines for sale  
21 on its website [www.fourvines.com](http://www.fourvines.com), at its winery, and through direct shipping to states  
22 throughout the country. Further, Plaintiff's wines featuring the Marks have nationwide  
23 distribution.

24  
25 15. Through 2009, Four Vines sold more than 135,000 cases of NAKED  
26 and NAKED CHARDONNAY branded wines, each bottle sold prominently displaying  
27 the Marks on its labels. During that time, the sale of NAKED branded wines generated  
28 more than \$8.8 million dollars in revenue for Four Vines.

1           16.     Since the introduction of NAKED CHARDONNAY, Four Vines has  
2 invested more than Five Hundred Thousand Dollars (\$500,000.00) marketing,  
3 advertising, and promoting NAKED branded wines, including attending numerous trade  
4 shows and industry events for the promotion and sale of the wines.

5  
6                   **DEFENDANT'S INFRINGEMENT OF THE MARKS**  
7

8           17.     Upon information and belief, in or around fall 2007, Defendant  
9 began using "NAKED CHARDONNAY" in connection with its own wines, goods  
10 identical to and competing with Plaintiff's wines.  
11

12           18.     In or around October 2007, Four Vines became aware that Defendant  
13 was offering identical goods using the identical NAKED CHARDONNAY trademark  
14 when it learned of Defendant's Certificate of Label Approval for its wine label displaying  
15 "NAKED CHARDONNAY." See Exhibit B.  
16

17           19.     In or around October 2007, Four Vines contacted Defendant by  
18 telephone regarding Defendant's use of the NAKED CHARDONNAY mark and  
19 informed Defendant of Four Vines' prior rights and goodwill in the Marks. Four Vines  
20 requested that Defendant cease and desist from using the Marks.  
21

22           20.     On or about November 27, 2007, Four Vines, through its counsel,  
23 mailed a letter to Defendant, confirming Four Vines' previous telephone call and  
24 informing Defendant of its violation of Four Vines' trademark rights. Four Vines  
25 demanded that Defendant immediately cease and desist all use of the Marks in connection  
26 with wine. See Exhibit C. Defendant neither responded to counsel's letter nor complied  
27 with Four Vines' cease and desist demand.  
28



1           21.    Upon information and belief, Defendant adopted and continued to  
2 use the Marks in bad faith with full knowledge of Four Vines' rights in and to the Marks,  
3 and with the intent to trade on the association with and goodwill attached to Four Vines.  
4

5           22.    On or about July 31, 2008, Four Vines, through its counsel, again  
6 notified Defendant by way of a second letter of its willingness to resolve the matter  
7 provided Defendant ceased use of the Marks in connection with wine, and that Four  
8 Vines would have to resort to legal action if a resolution could not be reached. See  
9 Exhibit D. Again, there was no response to counsel's letter.  
10

11           23.    Thereafter, Four Vines learned that Defendant continued to display,  
12 promote and sell wine under the Marks.  
13

14           24.    Plaintiff has confirmed that Defendant continues to display, promote,  
15 and sell NAKED CHARDONNAY branded wine through its website  
16 www.ryanpatrickvineyards.com. Copies of pages from Defendant's website are attached  
17 collectively as Exhibit E.  
18

19           25.    Defendant's continued use of the Marks will, unless restrained, cause  
20 irreparable harm to Plaintiff.  
21

22                           **FIRST CLAIM FOR RELIEF**  
23                           **FEDERAL SERVICE MARK INFRINGEMENT**  
24

25           26.    Paragraphs 1-25 are incorporated by reference as though set forth in  
26 their entirety here.  
27  
28

1           27. Pursuant to 15 U.S.C. §§ 1115(b) and 1065, Plaintiff's U.S. federal  
2 registration of the NAKED mark serves as evidence of the validity of the registered mark  
3 and of the registration of the mark, of Plaintiff's ownership of the mark, and of Plaintiff's  
4 exclusive nationwide right to use the registered mark in commerce.

5  
6           28. In violation of 15 U.S.C. § 1114, Defendant, without Plaintiff's  
7 authorization, has used and is currently using the federally registered NAKED mark in  
8 connection with wine, constituting use in commerce. The NAKED mark is being used in  
9 connection with the sale, offering for sale, distribution, or advertising of Defendant's  
10 goods wherein such use is likely to cause confusion, or to cause mistake, or to deceive.  
11 Such use has been undertaken by Defendant with Defendant's knowledge that such  
12 imitation is intended to cause confusion, or to cause mistake, or to deceive.

13  
14           29. Plaintiff and Defendant offer identical goods through the same  
15 channels of trade directed to the same consumers for the same purposes.

16  
17           30. Defendant's unauthorized use of the NAKED mark constitutes  
18 infringement of Plaintiff's registered mark. Defendant's use of the mark constitutes a  
19 misappropriation of Plaintiff's goodwill in the mark, wherein Defendant is knowingly  
20 using the goodwill established in the mark to sell Defendant's own goods.

21  
22           31. Plaintiff has no control over the nature and quality of the goods  
23 offered by Defendant under the NAKED mark. Plaintiff's reputation and goodwill will  
24 be damaged and the value of the NAKED mark is jeopardized by Defendant's continued  
25 use of the mark on or in connection with wine.

26  
27           32. Defendant's acts of infringement have caused and are causing great  
28 and irreparable injury to Plaintiff and to the mark and goodwill represented thereby, in an

1 amount that cannot be ascertained at this time. Unless this infringement is restrained,  
2 Defendant's use will cause further irreparable injury leaving Plaintiff with no adequate  
3 remedy at law.

4  
5 33. By reason of the foregoing, Plaintiff is entitled to injunctive relief  
6 against Defendant, restraining further action and infringement, and to Defendant's profits  
7 and to Plaintiff's damages proven to have been caused by reason of Defendant's  
8 infringement of the mark. Additionally, Plaintiff is entitled to the costs of the action,  
9 including attorneys' fees.

10  
11 **SECOND CLAIM FOR RELIEF**  
12 **UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**  
13 **15 U.S.C. § 1125(a)**  
14

15 34. Paragraphs 1 through 33 are incorporated by reference as though set  
16 forth in their entirety here.

17  
18 35. Defendant's unauthorized use of the Marks in connection with its  
19 goods has a tendency to deceive or confuse customers into believing that Defendant's  
20 wines are affiliated with Plaintiff, are sponsored or approved by Plaintiff, or are otherwise  
21 associated with or authorized by Plaintiff, in violation of 15 U.S.C. § 1125(a)(1)(A).  
22

23 36. Defendant's acts of unfair competition have caused and are causing  
24 great and irreparable injury to Plaintiff and to the goods and goodwill represented  
25 thereby, in an amount that cannot be ascertained at this time, and, unless restrained, will  
26 cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.  
27  
28



1           37. By reason of the foregoing, Plaintiff is entitled to injunctive relief  
2 against Defendant, restraining further acts of unfair competition and false designation of  
3 origin, and to recover attorneys' fees and any damages proven to have been caused by  
4 reason of Defendant's aforesaid acts of unfair competition and false designation of origin.

5  
6                           **THIRD CLAIM FOR RELIEF**  
7                           **COMMON LAW TRADEMARK INFRINGEMENT**

8  
9           38. Paragraphs 1 - 37 are incorporated by reference as though set forth in  
10 their entirety here.

11  
12           39. As described above, Plaintiff's NAKED and NAKED  
13 CHARDONNAY common law marks have been extensively used, advertised, and  
14 promoted throughout the United States for many years in connection with Four Vines'  
15 and now Plaintiff's wines.

16  
17           40. As a result of the use, advertisement, and promotion of the common  
18 law trademarks, the common law marks have become well and favorably known  
19 throughout the United States as identifying Plaintiff and its products. Four Vines and  
20 Plaintiff have developed valuable goodwill in Plaintiff's common law trademarks.

21  
22           41. Upon information and belief, Defendant has advertised, promoted,  
23 displayed, offered for sale, and/or sold products bearing the identical trademarks NAKED  
24 and NAKED CHARDONNAY.

25  
26           42. Defendant has infringed Plaintiff's common law marks by its acts as  
27 alleged above. Said use of the common law marks is without permission or authority of  
28

1 Plaintiff and said use by Defendant is likely to cause confusion, to cause mistake, and to  
2 deceive.

3  
4 43. Defendant's use of Plaintiff's common law marks is likely to cause  
5 members of the relevant public and trade to believe that the products sold bearing the  
6 infringing trademarks are provided by or in affiliation with or under the sponsorship or  
7 approval of Plaintiff when used in connection with the identical goods sold by the parties.

8  
9 44. Upon information and belief, Defendant's acts of trademark  
10 infringement and unfair competition have been committed with intent to cause confusion,  
11 mistake, and to deceive.

12  
13 45. Plaintiff has been damaged in an amount to be proven at trial, and  
14 Plaintiff is entitled to an accounting of Defendant's profits as well as enhanced remedies  
15 as provided by law for Defendant's willful conduct.

16  
17 46. Upon information and belief, unless restrained by this Court,  
18 Defendant will continue to infringe Plaintiff's common law trademarks by its use of the  
19 infringing NAKED CHARDONNAY mark.

20  
21 47. By engaging in the conduct as herein above alleged, Defendant has  
22 acted willfully, maliciously, oppressively and fraudulently, and Plaintiff is therefore  
23 entitled to punitive damages in an amount according to proof.

**FOURTH CLAIM FOR RELIEF**

**UNFAIR COMPETITION**

**[California Bus. and Prof. Code § 17200 et seq.]**

48. Paragraphs 1 - 47 are incorporated by reference as though set forth in their entirety here.

49. Defendant's activities complained of herein constitute unfair, deceptive and unlawful practices in violation of California Business and Professions Code Section 17200, *et seq.* to the injury of Plaintiff and the public.

50. The conduct of Defendant as alleged here will, unless restrained, damage Plaintiff in an amount to be determined at trial and cause irreparable harm including the serious impairment of the value of the Marks. Plaintiff is entitled to receive from Defendant any money it has received or acquired as a result of its unfair competition.

51. Plaintiff has been damaged in an amount to be proven at trial, and Plaintiff is entitled to an accounting of Defendant's profits as well as enhanced remedies as provided by law for Defendant's willful conduct.

**FIFTH CLAIM FOR RELIEF**

**COMMON LAW UNFAIR COMPETITION**

52. Paragraphs 1 - 51 are incorporated by reference as though set forth in their entirety here.

1                   53. Defendant's activities complained of here constitute unfair and  
2 unlawful practices in violation of the common law of the State of California to the injury  
3 of Plaintiff and the public.

4  
5                   54. The conduct of Defendant as alleged here will, unless restrained,  
6 damage Plaintiff in an amount to be determined at trial and will cause irreparable harm,  
7 including the serious impairment of the value of the Marks.

8  
9                   55. Plaintiff has been damaged in an amount to be proven at trial, and  
10 Plaintiff is entitled to an accounting of Defendant's profits as well as enhanced remedies  
11 as provided by law for Defendant's willful conduct.

12  
13                   56. By engaging in the conduct as alleged above, Defendant has acted  
14 willfully, maliciously, oppressively and fraudulently, and Plaintiff is therefore entitled to  
15 punitive damages in an amount according to proof.

16  
17 **PRAYER FOR RELIEF**

18  
19 THEREFORE, Plaintiff prays as follows:

20  
21                   1. That Defendant, its officers, directors, agents, employees, licensors,  
22 licensees, affiliates, any parent and subsidiary corporations, attorneys and representatives  
23 and all those in privity or acting under its direction or pursuant to its control, be enjoined  
24 and restrained, preliminarily and permanently from directly and indirectly:

25  
26                   a. Manufacturing, producing, sourcing, importing, selling,  
27 offering for sale, distributing, advertising, or promoting any wines which bear the  
28

1 trademarks NAKED or NAKED CHARDONNAY or any marks or designations that so  
2 resemble Plaintiff's NAKED and NAKED CHARDONNAY trademarks as to be likely to  
3 cause confusion, mistake, or deception in connection with products that have not been  
4 approved or sponsored by or originate from Plaintiff;

5  
6 b. Using any symbol, design, designation or other device that is  
7 likely to cause confusion, mistake, or deception as to an affiliation or association of  
8 Defendant or its goods with Plaintiff;

9  
10 c. Further infringing the rights of Plaintiff in Plaintiff's NAKED  
11 and NAKED CHARDONNAY trademarks or otherwise damaging Plaintiff's goodwill or  
12 business reputation;

13  
14 d. Otherwise competing unfairly with Plaintiff in any manner;  
15 and

16  
17 e. Continuing to perform in any manner whatsoever any of the  
18 other acts complained of in this Complaint.

19  
20 2. That Defendant and its officers, directors, agents, employees,  
21 licensors, licensees and all those acting under its direction and pursuant to its control, be  
22 ordered to deliver to Plaintiff for destruction all labels, signs, advertising, promotional  
23 and other materials bearing or containing the NAKED or NAKED CHARDONNAY  
24 marks, and remove all references to the Marks from Defendant's website and other  
25 electronic media.



1           3.     That Plaintiff recover from Defendant Plaintiff's damages in an  
2 amount to be proven at trial, and that Defendant be required to account for any profits that  
3 are attributable to its illegal acts and to pay them to Plaintiff.

4  
5           4.     That Defendant pay a sum equal to three times Defendant's profits  
6 and Plaintiff's damages, or such amount as the Court may in its discretion deem  
7 reasonable and just pursuant to 15 U.S.C. §1117 (a).

8  
9           5.     That Defendant pay punitive damages under California common law.

10  
11          6.     That Plaintiff be awarded its costs, disbursements and reasonable  
12 attorneys' fees incurred in connection with this action.

13  
14          7.     That the Court grant such other and further relief as it deems just and  
15 proper.

16  
17           DATED: November 18, 2010.

COMMINS & KNUDSEN  
Professional Corporation

18  
19 By: \_\_\_\_\_

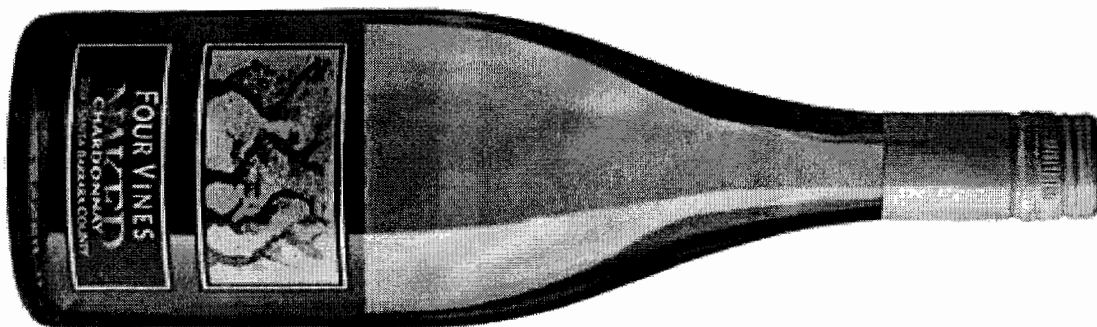
Kit Knudsen  
Attorneys for Plaintiff  
Purple Wine Production Company

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial for all claims as provided for in Rule 38 of the Federal Rules of Civil Procedure.


COMINS & KNUDSEN  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

# **EXHIBIT A**



# **EXHIBIT B**

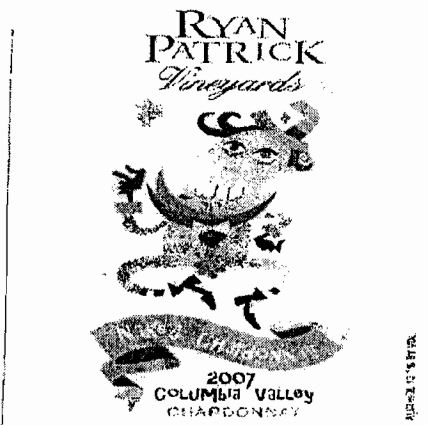




TTB ID		CMB No. 1513-0020 (01/31/2009)	
07025000-000033		DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice Below)	
1. REP. ID. NO. (Required)		PART I - APPLICATION	
CT 8 OR 01		4. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required)	
7. PLANT REGISTRY/BASIC PERMIT/BREWER'S NOTICE (Required)		TERRY FLANNAGAN DBA RYAN PATRICK VINEYARDS 80 4TH ST. Rock Island, WA 98850	
2. SOURCE OF PRODUCT (Required)		8a. MAILING ADDRESS IF DIFFERENT	
Domestic <input checked="" type="checkbox"/> Imported <input type="checkbox"/>		520 LOWER SUNNYSIDE RD Wenatchee, WA 98801	
4. SERIAL NUMBER (Required)		10. FORMULA/POP NO. (If any)	
YEAR 07 10 23		N/A	
5. TYPE OF PRODUCT (Required)		11. LAB NO. & DATE/PRE-IMPORT NO. & DATE (If any)	
WINE <input checked="" type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGES <input type="checkbox"/>		N/A	
6. BRAND NAME (Required)		12. TYPE OF APPLICATION (Check appropriate box(es))	
RYAN PATRICK Vineyards		<input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL	
7. FANCY NAME (If any)		<input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL	
TERRY FLANNAGAN DBA RYAN PATRICK VINEYARDS		For sale in _____ only (Print from instructions)	
8. EMAIL ADDRESS (If any)		<input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL BOTTLE CAPACITY BEFORE CLOSURE (If in inches)	
terry@ryanpatrickvineyards.com		<input type="checkbox"/> RESUBMISSION AFTER REJECTION	
12. NET CONTENTS		TTB ID	
750 mL			
13. ALCOHOL CONTENT			
12.9%			
14. WINE APPELLATION (If on label)			
Columbia Valley			
15. WINE VINTAGE DATE (If on label)			
2006			
16. PHONE NUMBER			
509-667-9861			
17. FAX NUMBER			
509-667-9861			
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, corks, etc.) OTHER THAN THE LABELS APPLIED BELOW, OR (b) BLOWN, BRANDED OR EMBEDDED IN THE CONTAINER (e.g., cork, etc.) THIS WORDING MUST BE NOTED HERE EVEN IF IT APPEARS PORTIONS OF THE LABELS APPLIED BELOW. ALSO, THE VERBATIM TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON "AUXILIARY"			
CORK - RYAN PATRICK VINEYARDS.COM			
CAPSUL - Cluster of GRAPES			
750 mL			
PART II - APPLICANT'S CERTIFICATION			
Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief, and that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB Form 5100.31, Certificate/Exemption of Label/Bottle Approval.			
20. DATE OF APPLICATION		22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT	
1-8-07		TERRY FLANNAGAN VIVIAN FLANNAGAN	
21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT			
PART III - TTB CERTIFICATE			
This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.			
23. DATE ISSUED		24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU	
FEB 0 2007			
FOR TTB USE ONLY			
QUALIFICATIONS			
EXPIRATION DATE (If any)			
ctions 4, 6 and			
 <p>2006 Columbia Valley CHARDONNAY</p> <p>UPC</p> <p>Produced and Bottled By Ryan Patrick Vineyards, Rock Island, Washington www.ryanpatrickvineyards.com</p> <p>GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.</p>			

OMB No. 1515-0025 10/31/2009

<b>TTB ID</b> 08015-000-000021		<b>DEPARTMENT OF THE TREASURY</b> <b>ALCOHOL AND TOBACCO TAX AND TRADE BUREAU</b> <b>APPLICATION FOR AND CERTIFICATION/EXEMPTION OF</b> <b>LABEL/BOTTLE APPROVAL</b> <small>(See Instructions and Supervisory Reduction Act Notice Below)</small>	
1. REF ID: <u>005</u>		2. TYPE OF PRODUCT: <u>WINE</u>	
3. PLANT AND SYMBIOTIC PERMIT/APPRENTICE (if required) <u>214-18-03</u>		4. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported	
5. SERIAL NUMBER (Required) <u>1311124</u>		6. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGES	
7. BRAND NAME (Required) <u>Ryan Patrick Vineyards</u>		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DUA OR TRADENAME IF USED ON THE LABEL (Required) <u>Ryan Patrick Vineyards</u> <u>9224 1st St NW</u> <u>Shelton, WA 98584</u>	
9. MAILING ADDRESS (if any) <u>Ryan Patrick Vineyards</u> <u>9224 1st St NW</u> <u>Shelton, WA 98584</u>		10. FORMULA/SOP NO. (if any) <u>N/A</u>	
11. LAB. NO. & DATE PREPARED <u>1311124</u>		12. TYPE OF APPLICATION (Check applicable box(es)) <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL <small>(For sale in: <u>WA</u> State(s) only)</small> <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL TOTAL <small>(If B in amount)</small> <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID: _____	
13. WINE VINTAGE DATE (if on label) <u>2007</u>		14. ALCOHOL CONTENT <u>13.1% Columbia Valley</u>	
15. WINE VINTAGE DATE (if on label) <u>2007</u>		16. PHONE NUMBER <u>509-858-1444</u>	
17. FAX NUMBER <u>509-858-1451</u>		18. SHOW ANY WORDING (B) APPEARING ON MATERIALS FINELY AFFIXED TO THE CONTAINER (e.g., caps, corks, etc.) OTHER THAN THE LABELS AFFIXED (C) FAN OUT IN DOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents, etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT QUALIFIES FOR EXEMPTION OF THE LABELS AFFIXED BELOW. ALSO, PREVIOUS TRANSLATIONS OF FOREIGN LANGUAGE TO APPEARING ON LABELS <u>Cork - Ryan Patrick Vineyards</u> <u>Wine - Columbia Valley</u>	
<b>PART B - APPLICANT'S CERTIFICATION</b>			
Under the penalties of perjury, I declare that all statements appearing on this application are true and correct to the best of my knowledge and belief, and that the representations on the basis reached to this form, including supplemental documents, truly and correctly represent the content of the information as shown on the labels. I also declare that I have read, understood and complied with the conditions and instructions which the attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.			
19. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT <u>Ryan Patrick Vineyards</u>		20. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT <u>RYAN PATRICK VINEYARDS</u>	
<b>PART C - TTB CERTIFICATE</b>			
This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.			
21. DATE ISSUED <u>IAN 13 JUN</u>		22. AUTHORIZED SIGNATURE <u>[Signature]</u>	
<b>FOR TTB USE ONLY</b>			
QUALIFICATIONS		EXPIRATION DATE (if any)	

Instructions 4, 6 and 7



  
 Named after the simple beauty of Chardonnay, its flavors expressed in the wine, retaining the variety characteristics of the Chardonnay grapes was achieved by fermentation in stainless steel tanks at 55° Fahrenheit and no oak aging. It is the first for this wine with perfect fruit and price, making it a wonderful choice for daily consumption. Serve chilled.  
 CONTAINS 500 mL • 750 ML  
**GOVERNMENT WARNING:** (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.  
 Produced and Bottled By  
 Ryan Patrick Vineyards, Quincy, Washington  
 www.ryanpatrickvineyards.com  
  
 51057 00009

TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

# **EXHIBIT C**

Owen, Wickersham & Erickson, P.C.

*Intellectual Property Law Since 1933*

455 Market Street, 19th Floor ~ San Francisco, California 94105  
415/882-3200

GREGORY N. OWEN

Fax 415/882-3232  
gowen@owe.com

November 27, 2007

*Via E-mail: [terry@ryanpatrickvineyards.com](mailto:terry@ryanpatrickvineyards.com) and  
First Class Mail*

Mr. Terry Flanagan  
Ryan Patrick Vineyards  
520 Lower Sunnyslope Road  
Wenatchee, WA 98848

**Re: NAKED and NAKED CHARDONNAY Trademarks of Four Vines**

Dear Mr. Flanagan:

We are trademark counsel to Q4X, LLC, doing business as Four Vines Winery. We have been asked to follow up on your conversation with Mr. Bill Grant with the requirements of an agreement concerning Ryan Patrick Vineyards' sale of wines using the trademark "Naked Chardonnay." As Mr. Grant has explained, Four Vines has used the trademarks NAKED and NAKED CHARDONNAY on its wines since as early as 2001 and the marks have been used continuously and extensively since that time. The NAKED and NAKED CHARDONNAY brands have been extensively advertised and promoted since their introduction and Four Vines' NAKED brand wines have garnered critical acclaim and a valuable reputation among wine consumers and in the industry. Four Vines has pending approved U.S. Trademark Application Serial No. 78-850911 for NAKED for wines. The NAKED trademarks are extremely valuable assets of Four Vines.

As you are aware from your conversation with Mr. Grant, Four Vines cannot permit the use of the word NAKED alone or in combination with a varietal name in connection with wine. Under U.S. trademark law the first to adopt and use a trademark is the owner of that mark and is entitled to police use of the mark by others where that use is likely to cause confusion, deception, or mistake among consumers or within the trade. Ryan Patrick Vineyards' use of "Naked Chardonnay" is likely to cause confusion, deception, and mistake among consumers and within the trade. Purchasers and members of the trade are likely to mistakenly believe that Ryan Patrick Vineyards' "Naked Chardonnay" branded product is in some manner related to, associated with or comes from Four Vines. This likelihood of confusion gives rise to your liability for trademark infringement and unfair competition.



Owen, Wickersham & Erickson, P.C.  
*Intellectual Property Law Since 1933*

Mr. Terry Flanagan  
November 27, 2007  
Page -2-

We understand that perhaps you were not aware of Four Vines' rights in the NAKED and NAKED CHARDONNAY trademarks when you selected the mark for use on your wine. However, ignorance of the trademark owner's rights is not a defense and continued use of the infringing mark after notice of the owner's rights can give rise to liability for enhanced damages and attorneys' fees.

We are informed that Ryan Patrick Vineyards has produced and is selling 3,300 cases of Chardonnay that feature "Naked Chardonnay" on the front and back labels. In addition, we note that "The Wines" section of the ryanpatrickvineyards.com website prominently displays "2006 Naked Chardonnay" and discusses the meaning of "naked" as it relates to the wine.

In settlement of this matter Four Vines will permit Ryan Patrick Vineyards to sell its inventory of 3,300 cases of "Naked Chardonnay" labeled wines conditioned upon your agreement to the following:

- 1) Ryan Patrick Vineyards will not in the future use the word "NAKED" alone or in combination with a varietal name in the advertisement, promotion, marketing, distribution, offering for sale, or selling of wines; and
- 2) the Ryan Patrick Vineyards website will immediately be revised to remove the display of the phrase "2006 Naked Chardonnay." The phrase may be replaced with "2006 Chardonnay" or some other suitable identification not using the word "naked." In addition, the textual materials referencing the meaning of "naked" will immediately be removed from the website.

Please provide confirmation of your agreement to these terms by signing and returning a copy of this letter. Four Vines appreciates your cooperation in this matter.



Owen, Wickersham & Erickson, P.C.  
*Intellectual Property Law Since 1933*

Mr. Terry Flanagan  
November 27, 2007  
Page -3-

This letter is written without prejudice to Q4X, LLC's rights, all of which are expressly reserved. We require your response within ten (10) days.

Sincerely,

OWEN, WICKERSHAM & ERICKSON, P.C.

By



Gregory N. Owen

AGREED AND ACCEPTED

\_\_\_\_\_  
Terry Flanagan  
Proprietor, Ryan Patrick Vineyards

Date: \_\_\_\_\_

Our Ref. Q4X 90001  
GNO/hs  
cc: Four Vines Winery

S:\Clients\Q4X\Ryan Patrick Ltr 1 11-07.wpd

# **EXHIBIT D**

Owen, Wickersham & Erickson, P.C.

*Intellectual Property Law Since 1933*

455 Market Street, 19th Floor ~ San Francisco, California 94105  
415/882-3200

Fax 415/882-3232  
gowen@owe.com

GREGORY N. OWEN

July 31, 2008

*Via E-mail [terry@ryanpatrickvineyards.com](mailto:terry@ryanpatrickvineyards.com) and U.S. Mail*

Mr. Terry Flanagan  
Ryan Patrick Vineyards  
520 Lower Sunnyslope Road  
Wenatchee, WA 98848

**Re: NAKED CHARDONNAY Trademark Infringement**

Dear Mr. Flanagan:

You will recall that we represent Q4X, LLC, doing business as Four Vines Winery ("Four Vines"). As you know, Four Vines is the owner of the trademarks NAKED (U.S. Trademark Reg. No. 3343976) and NAKED CHARDONNAY for wines. As a courtesy to you, Mr. Bill Grant asked that we provide you with additional information pertaining to Ryan Patrick Vineyards' infringing use of the NAKED CHARDONNAY trademark in the hope that litigation may be avoided.

To prevail in a trademark infringement and unfair competition action, Four Vines must establish that Ryan Patrick Vineyards' NAKED CHARDONNAY use is likely to cause confusion, mistake or deception in the marketplace. The factors that the Ninth Circuit requires trial courts to consider in determining the existence of a likelihood of confusion in trademark infringement cases are set forth in AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979). The factors relevant to this case are: the similarity of the marks; the proximity of the goods; the strength of the claimant's mark; the marketing channels used; and the infringer's intent in selecting its mark. Analysis of the facts in this case can lead to no other conclusion but that there is a likelihood of confusion, mistake and deception as to the source of Ryan Patrick Vineyards' NAKED CHARDONNAY wines or as to an affiliation, connection or association between the parties in violation of Trademark Act Sections 32 and 43(a).

Owen, Wickersham & Erickson, P.C.

*Intellectual Property Law Since 1933*

Mr. Terry Flanagan

July 31, 2008

Page 2 of 3

In this case the marks are identical, the goods are identical, Four Vine's NAKED and NAKED CHARDONNAY marks are strong and well known, and the marketing channels are identical. Further, even in the unlikely event that your original adoption and use of NAKED CHARDONNAY was without knowledge of the brand recognition, valuable good will, and reputation associated with Four Vines' NAKED marks, your continued use of NAKED CHARDONNAY after receipt of our November 2007 demand letter is in willful disregard of the known rights of Four Vines and establishes a wrongful intent on the part of Ryan Patrick Vineyards.

The remedies available for trademark infringement and unfair competition include an injunction preventing use of the offending mark and a recall of all goods and materials displaying the offending mark, as well as liability for damages and payment of profits made from the sale of products featuring the infringing trademark. Where the infringement is intentional or in willful disregard of the known rights of the trademark owner, as in this case, damages and profits may be trebled and the infringer may be required to pay the costs and attorneys' fees of the mark owner.

We understand from Mr. Grant that you are under the misapprehension that the unauthorized, infringing use by others of the NAKED and NAKED CHARDONNAY trademarks is a defense to your own infringement. First, the infringement of others does not justify your infringement, nor does such third party infringing use provide a defense. Second, you incorrectly assume that Four Vines is not active in its policing and enforcement efforts. Four Vines vigorously and consistently polices the unauthorized use of its trademarks.

On behalf of Four Vines we demand that Ryan Patrick Vineyards immediately cease and desist advertising, promoting, distributing, offering for sale, selling or other commercial exploitation in the United States of wines using or displaying the phrase NAKED CHARDONNAY. We must have immediate written assurance that Ryan Patrick Vineyards is undertaking to immediately cease all uses of NAKED or NAKED CHARDONNAY and that such use will not again resume in the future. Absent such written assurance Four Vines will take the action necessary to protect its valuable trademarks.

Owen, Wickersham & Erickson, P.C.

*Intellectual Property Law Since 1933*

Mr. Terry Flanagan

July 31, 2008


Page 3 of 3

This letter is written without prejudice to Q4X, LLC's rights, all of which are expressly reserved. We require your response within ten (10) days.

Sincerely,

OWEN, WICKERSHAM & ERICKSON, P.C.

By



Gregory N. Owen

Our Ref. Q4X 90001

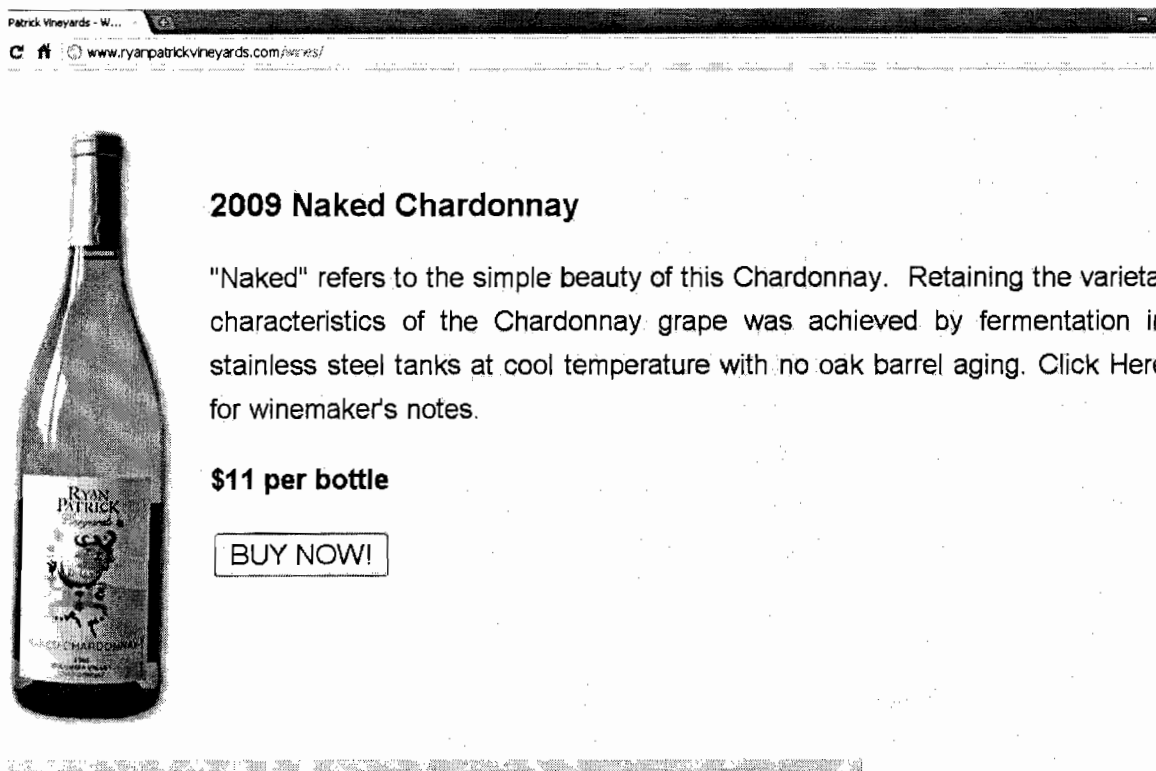
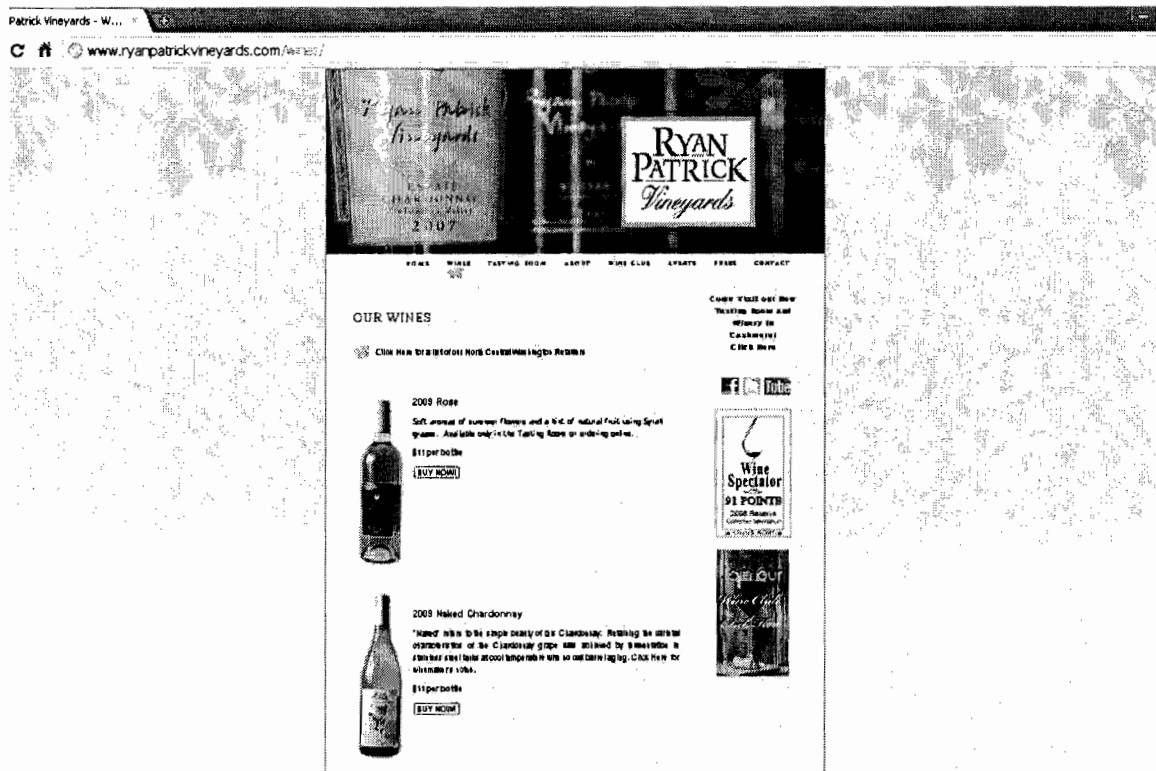
GNO/hs

cc: Four Vines Winery

S:\1Clients\Q4X\Ryan Patrick Ltr 7-08.doc



# **EXHIBIT E**



Cart

www.atsafe.com/07633.cfm

# RYAN PATRICK *Vineyards*

PLEASE NOTE: We charge real-time shipping fees and a nominal handling fee.  
WE WILL EMAIL you the total to be charged to your card, including these fees.

Product	Quantity	Price	Amount
2009 Naked Chardonnay	<input type="text" value="1"/>	11.00	11.00
All prices are in US Dollars		TOTAL	11.00

To delete an item, change the quantity to zero and click RECALCULATE

Shopping cart by  
Mal's e-commerce

# RYAN PATRICK *Vineyards*

## 2008 Naked Chardonnay

"Naked" refers to the simple beauty of this Chardonnay. Retaining the varietal characteristics of the Chardonnay grape was achieved by fermentation in stainless steel tanks at cool temperature with no oak barrel aging.

Vineyards:	94% Homestead, 6% Bishops
Primary Fermentation:	Conducted in stainless steel tanks at 55°F
Secondary Fermentation:	No malolactic fermentation
Bottling Date:	January 2009
Cases Produced:	3,360
Alcohol:	13.5%
Titrateable Acidity:	6.9 g/L
pH:	3.62

